IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 26285 of 2006

DATED: 22.11.2006

Between:
Guntupalli Krishna Rao & ors petitioners

And

M/s.Singareni Collieries Company Limited & ano Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 26285 OF 2005

ORAL ORDER:

The present writ petition is filed seeking the relief as under;

> "….declaring the action of the respondents in not providing employment to the 3rd petitioner as dependant to the petitioner no.1 in lieu of his termination of services on the ground of declaring medically unfit by the medical board of the company to continue in service and also not alternatively providing payment of monthly monetary compensation as per clause 9.4.0 and 9.5.0 of National Coal Wage Agreement-V dated 19.1.1996 at the rate of Rs.2,000/- per month from the date of termination of services of the petitioner no.1 dated 26.8.1993 to upto the age of 60 years and also not releasing the gratuity of Rs.75,000/- and wage arrears for the period from 1.7.1991 to 26.8.1993 an amount of Rs.40,000/- as G.S.L.I Rs.3,500/- as highly arbitrary, illegal and violative of Article 14,16 and 21 of the Constitution of India and consequently to direct the respondents to either provide employment to the writ petitioner no.3 or to pay monthly monetary compensation of Rs.2000/- per month to the 2nd petitioner and to pay Rs.75,000/- towards gratuity , Rs.40,000/- wage arrears and Rs.3,500/- towards GSLI with interest at the rate of 18% per annum from the date of termination of the services of the petitioner no.1 with all consequential benefits…….

The facts, necessary for disposal of the writ petition are as under;

The first petitioner, was employed in the respondent company as Personal Assistant to Chief Engineer. After rendering service for

about 33 years, he was declared medically unfit by the Medical board of the respondent company and his services were terminated by order dated 25.8.1993. The second petitioner is wife and third petitioner is son of the first petitioner. On 26.8.1993, he made an application to provide employment to his son-in-law under the quota of dependants of retired employees on medical invalidation and the same was rejected by order dated 20.6.1994. Thereafter, the petitioner made an application dated 15.2.1995 to provide employment to his son/third respondent herein, who has passed degree in Mechanical Engineering. The petitioners claim that in terms of the National Coal Wage Agreement-V, one of the dependant is entitled to employment and the female dependant is entitled to compensation of Rs.2000/- per month till she attains the age of 60 years. Thus, the petitioner contends that his wife being a female dependant is entitled to compensation of Rs.2000/- per month and his son being a male dependant is entitled to suitable employment in the respondent company. It is also contended that in some cases lumpsum compensation of Rs.50,000/- was granted and even the said compensation amount was not released to the petitioners. The first petitioner alleges that he is entitled for gratuity of Rs.75,000/- and the respondent company has not released the same and withheld it illegally. The petitioner further alleges that he is entitled to Rs.40,000/- towards differential wages in terms of National Coal Wage Agreement –V together with 18% interest and further amount of Rs.3,500/- towards G.S.L.I. Hence, the present writ petition seeking necessary reliefs.

A counter affidavit was filed on behalf of the respondents stating that the services of the petitioner were terminated on 26.8.1993 and the present writ petition filed after lapse of 12 years claiming employment to his son and monthly monetary compensation is liable

to be dismissed on the ground of delay and laches. It is also stated that the son of the petitioner/third petitioner herein has given an undertaking dated 26.8.1993 stating that he is pursuing his further studies at Hyderabad and is not interested in dependent employment in the respondent company. That the request of the first petitioner to provide employment to his

son-in-law was rejected, since the daughter of petitioner was employed in the respondent company and his son-in-law is not dependent on the first petitioner. That the first petitioner submitted another representation to provide suitable employment to his son/third petitioner herein as per his qualification. He was informed that compassionate employment can be provided only in the lowest cadre. As regards the claim of the petitioner for grant of Monthly Maintenance Compensation, it is stated that since the petitioner has a male dependant, the wife of petitioner/second petitioner herein is not eligible for payment of monthly maintenance compensation of Rs.2,000/- in terms of circular dated 5.9.1997. The claims made by the petitioner as regards differential wages and gratuity amount were denied and it is stated that the petitioner has not submitted his claim in prescribed proforma. That the first petitioner was paid an amount of Rs.1,55,323/- towards coal mines provident fund and is entitled to approximately Rs.75,000/- towards other terminal benefits.

The first petitioner filed a reply mainly contending that the National Coal Wage Agreement-V got statutory force under section 18 of the Industrial Disputes Act, 1947 and the respondents cannot escape from their responsibility of providing employment and paying the monthly monetary compensation of Rs.2000/- to the dependants. It is also stated that till date no action was taken by the respondents on the representation filed by him to provide employment to his son and to

grant monthly monetary compensation to his wife.

A rejoinder was filed on behalf of the respondents reiterating the contentions raised in the counter affidavit and stating that the petitioners want to gain something from the respondent company, for which they are not entitled to. It is further stated that in terms of circular dated 1.4.1987 providing suitable employment is not mandatory. That the respondent has to provide dependant employment as per the guidelines of National Coal Wage Agreement but not necessarily suitable employment commensurate with the qualification and that there cannot be any insistence for a particular post. It is reiterated that the second petitioner is not entitled to monthly monetary compensation, since the family has a male dependant/third petitioner.

Learned Standing Counsel for respondent company submitted that providing employment under compassionate grounds is intended to provide immediate relief to the needy family and providing employment commensurate with the qualifications is not mandatory on the part of the respondent company. It is further submitted that the third petitioner/son of the first petitioner has initially given an undertaking that he is prosecuting further studies at Hyderabad and is not interested to take employment in respondent company, however, he was offered the post of badli coal filler, but he declined to join in the said post. That the first petitioner has not approached the authorities nor submitted his claim for payment of gratuity in a prescribed proforma for settlement of his retrial benefits and on submission of the required forms, the respondent company will settle and pay the benefits to which first petitioner is entitled to. It is also submitted that the second petitioner is not entitled to monthly monetary compensation.

Heard the learned counsel for petitioner, learned Standing Counsel for respondent company at length and perused the material

available on record.

The points that arise for consideration in the present writ petition are;

(i) Whether the third petitioner is entitled to claim a suitable employment commensurate with his educational qualifications.

(ii) Whether the second petitioner-being wife of the first petitioner and female member of the family is entitled to receive monthly monetary compensation, in lieu of employment to the son-third petitioner.

The petitioners claim that their representations dated 15.2.1995, 25.3.2004, 22.12.2004, 28.11.2005, 18.11.2005, 15.10.2005 and 18.7.2005 seeking employment to his son and for settlement of terminal benefits of the first petitioner are pending and no orders are passed thereon. While, it is the contention of the respondent company that first petitioner cannot claim compassionate employment to his son i.e., the third petitioner commensurate with his educational qualification and the third respondent was offered the post of "Badli Coal Filler" on compassionate grounds, but he rejected the same. Since there is a male member in the family/third petitioner the female member/second petitioner, is not entitled to claim the monthly monetary compensation. The petitioners claim the benefit in terms of clause 9.4.0 and 9.5.0 of the National Coal Wage Agreement-V, which reads as under;

9.4.0. Employment to one dependant of a worker who is permanently disabled in his place.

……

9.5.0. Employment /monetary compensation to

female dependant

(i) …..

(ii) In case of death/total permanent disablement due to causes other than mine accident and medical unfitness under clause 9.4.0 if the female dependants is below the age of 45 years she will have the option either to accept the monetary compensation of Rs.2000/- per month or employment. In case the female dependant is above 45 years of age she will be entitled only to monetary compensation and not to employment.

(iii) ….

(iv) Monetary compensation, wherever applicable would be paid till the female dependant attains the age of 60 years.

(v) ……

Clause 9.5.0 (ii) provides that if the female dependant is below the age of 45 years, she will have the option either to accept the monetary compensation of Rs.2000/- per month or employment. Further,

Clause 9.5.0 (iii) provides that if no employment has been offered and the male dependent of the concerned worker is 15 years and above in age he will be kept on a live roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years.

In the present case, though it is contended orally that the third petitioner was offered employment under compassionate grounds i.e., the post of “Badli Coal Filler” and that he refused to join the same, there is no material to substantiate the same. Be that as it may, the fact remains that till date the family has not availed the employment to male member, nor it availed the monthly monetary compensation or the lumpsum compensation of Rs.50,000/-.

The circular vide Ref No.P.40/5214/IR/1875 dated 5.9.1997

issued by the respondent company in terms of the settlement dated 31.7.1997

very clearly states that it is intended to provide immediate employment/ monthly monetary compensation to the dependants. According to clause B (2) of the circular, where there is no male dependant, the female dependant shall be paid monthly monetary compensation of Rs.2000/-. Clause D (d) prescribes for grant of monthly monetary maintenance, till the male member attains the majority and to withdraw the monthly monetary compensation thereon. Clause D (d) of the circular reads as under:

> "(d).. In the case of death due to mine accident or for reasons other than mine accident on board medical unfitness, if the male dependant of the concerned employee is 12 years and above, but below 18 years, his name will be kept on live roster and would be provided employment after attaining the age of 18 years, subject to his suitability. During the period, the male dependant is on live roster, the female dependant will be paid monthly monetary compensation. Once the male dependant is provided employment on his attaining 18 years of age, the monthly monetary compensation of Rs.3000/- or Rs.2000/- per month as the case may be, shall be withdrawn"

Clause (E) (3) prescribes consideration of the cases of female dependants who have not received lumpsum in lieu of employment. The relevant portion reads as under;

> "3.. However, the cases of female dependants who have not received lumpsum amount of Rs.50,000/- in lieu of employment shall be considered for payment of Monthly Monetary Compensation of Rs.2000/- in case there is no male dependant-direct or indirect for employment."

Thus, the case of the petitioners falls under the category where

employment is not provided to the male dependant, nor any lumpsum compensation amount was paid. The scheme provides for payment of monthly monetary compensation in lieu of employment. If a post of badli coal filler is offered to a person possessing the qualification of Mechanical Engineering, naturally he would not accept the same and the same cannot be termed as if employment was offered on compassionate ground and the same was not accepted. Be that as it may, the fact remains that though the petitioners made series of representations, till date neither employment was provided nor any financial assistance in terms of the circular guidelines was provided to the petitioners. Hence, the contention of the petitioners that since no suitable employment was provided to the male member and no lumpsum compensation was paid to the female member of the family, they are entitled to monthly monetary compensation, has some force. Clause E (3) provides that in cases of female dependants who have not received lumpsum amount of Rs.50,000/- in lieu of employment shall be considered for payment of Monthly Monetary Compensation of Rs.2000/- in case there is no male dependant-direct or indirect for employment. In the present case though there is male member in the family eligible for compassionate appointment, the fact remains that employment was not provided to him, nor lumpsum amount was paid to the female member. Hence, the second petitioner-wife, being the female member of the family is entitled to receive the monthly monetary compensation.

For the foregoing reasons, the respondents are directed to consider the case of the second petitioner for payment of monthly monetary compensation in terms of the circular guidelines. Further, the first petitioner is directed to approach the second respondent and submit the application in a prescribed form for settlement of his retrial

benefits.

On filing such application, the second respondent is directed to consider the same and settle the terminal benefits of the first petitioner expeditiously.

Accordingly, the writ petition is disposed of. No costs.

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N.V.RAMANA,J

DATE: 22-11-2006

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THE HON'BLE MR JUSTICE N.V. RAMANA

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The learned counsel for petitioner mainly relied upon the clause (3) of guidelines prescribed vide circular dated 5.9.1997 and contended that since employment was not given to the male dependant, the female dependant is entitled to receive the monthly monetary compensation

The relevant portion of the memorandum of settlement arrived at under Section 12 (3) of the I.D.Act, dated 31.7.1997, reads as under;

….

(e).. In line with the understanding reached vide earlier settlements dt 25.10.1991, 28.10.1992 and 17.6.1994 cases of female dependants who accepted lumpsum amount of Rs.50,000/- in lieu of employment shall not be reopened. It is agreed to review the pending female dependant cases arising from 22.2.1996 to 30.6.1996 for payment of monetary compensation of Rs.2000/- per month from the date of signing this settlement.

(f).. Further at the request of the unions, even though there is no obligation to review the cases of female dependants (falling during the period from 2.10.1991 to 21.2.1996) who had not accepted the lumpsum payment of Rs. 50,000/- in lieu of employment or not secured employment to any of the male dependants, it is agreed to review such cases as a very special case on the following lines:

(i).. They shall be given final option to seek employment to a male dependant direct or indirect,

(ii).. In the absence of major male dependant, minor male dependants, if any will be provided employment as per the procedure indicated under clause (d) above.

(iii).. In the absence of major/monor male dependants mentioned under sub clauses (i) and (ii) above monetary compensation of Rs.2000/- per month shall be paid to the female dependants.

Pursuant to the above settlement, the respondent company issued a circular Ref No.P.40/5214/IR/1875 dated 5.9.1997 prescribing the general guidelines and procedure for payment of monthly monetary compensation to female dependants in lieu of employment. The relevant portion of the said circular reads as under;

"1.. In accordance with the memo of settlement dt 31.7.1997, the monthly monetary compensation shall be made to the cases of female dependants arising during the period from 2.10.1991 to 30.6.1996.

2.. The cases of female dependants who were already paid lumpsum amount of Rs.50,000/- in lieu of employment in accordance with Memo of settlement dt 25.10.1991, 28.10.1992 and 17.6.1994 shall not be reopened.

3.. However, the cases of female dependants who have not received lumpsum amount of Rs.50,000/- in lieu of employment shall be considered for payment of monthly monetary compensation of Rs.2000/- in case there is no male dependant- direct or indirect for employment……

Condi**tion 9.5.0. and concentrate on this clause to grant the relief**